

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

BRYAN COLBY CHAPPELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 2:20-CV-00686-JMS-MG
	)	
RHODES, <i>Dental Assistant, et al.</i> ,	)	
	)	
Defendants.	)	

**BRIEF IN SUPPORT OF DEFENDANTS RHOADS AND VAN WAGONER’S  
MOTION FOR SUMMARY JUDGMENT ON FAILURE TO EXHAUST DEFENSE**

Plaintiff Bryan Colby Chappell, an inmate confined within the Federal Bureau of Prisons (“BOP”), brings this action pursuant to *Bivens v. Six Unknown Narcotics Agents*, 403 U.S. 388 (1971), against Defendants, Kimberly Rhoads, a dental hygienist at the Federal Correctional Complex in Terre Haute (“FCC Terre Haute”), Dr. Jennifer Van Wagoner, a dentist at FCC Terre Haute, and Dr. Kimberly Bachmann, a contractor.<sup>1</sup> Chappell contends that, after he broke a tooth on December 25, 2019, Defendants Rhoads and Van Wagoner were deliberately indifferent to his pain and need for dental treatment. [See Filing No. 1 at 2-6.]

Although Chappell filed one administrative remedy encompassing these allegations against Ms. Rhoads and Dr. Van Wagoner, he did not proceed forward with that remedy beyond the institution level. Furthermore, none of the remedy cases that Chappell has exhausted—all of which were exhausted well before he broke his tooth—include these allegations either. As such, Chappell has failed to exhaust his mandatory administrative remedies regarding his claims

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<sup>1</sup> Private counsel has already appeared on behalf of Dr. Bachmann. [See Filing No. 31.] As such, undersigned counsel does not represent Dr. Bachmann, and this motion is filed on behalf of only Ms. Rhoads and Dr. Van Wagoner.

against Ms. Rhoads and Dr. Van Wagoner before bringing these claims in court, justifying their dismissal as defendants.<sup>2</sup>

## I. PROCEDURAL HISTORY

On April 27, 2020, Chappell filed a Complaint against numerous BOP employees bringing twenty-two *Bivens* claims against them. [See Filing No. 1 in *Chappell v. Trueblood*, Cause No. 2:20-cv-00224-JRS-MG (S.D. Ind.).] Neither Ms. Rhoads nor Dr. Van Wagoner were named as defendants in this initial Complaint. [See generally *id.*] On May 7, 2020, Chappell filed an “Addendum to Bivens Action,” adding four more claims and six defendants, including “Ms. Rhodes” and an “unknown dentist” for failing to provide him proper or timely care for a broken tooth he allegedly experienced on December 25, 2019. [See Filing No. 10 in *Chappell v. Trueblood*.] Chappell continued to add defendants and claims to his action. [See Filing Nos. 11, 13, 19 in *Chappell v. Trueblood*], until the Court ordered him to file an Amended Complaint that contained all of his claims [Filing No. 21 in *Chappell v. Trueblood*]. Chappell filed his Amended Complaint in October 2020, including his claim against Ms. Rhoads and an unknown dentist as “Claim Twelve” in that filing. [See Filing No. 31 in *Chappell v. Trueblood*, at 15-16.] The Court then screened Chappell’s Amended Complaint, concluding that Chappell’s claims against Ms. Rhoads and the unknown dentist were unrelated to his other claims and severing those claims from the original action. [Filing No. 34 at 12-13.]

Accordingly, on December 28, 2020, the instant action was opened. [See Filing No. 1.] The Court screened the newly severed claims, allowing an Eighth Amendment claim against Ms. Rhoads to proceed, but dismissing Chappell’s claim against the unknown dentist. [Filing No. 6

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<sup>2</sup> Should the Court deny this motion, Defendants Rhoads and Van Wagoner reserve the right to move for summary judgment on the merits of Chappell’s claims, and any other defenses, at a later date.

at 4-5.] Shortly thereafter, Chappell filed a motion seeking to add Dr. Van Wagoner as the previously unknown dentist, which the Court granted. [Filing Nos. 9, 10.]

On March 8, 2021, at the Court's direction [*see* Filing No. 16], Chappell filed an Amended Complaint, again naming Ms. Rhoads and Dr. Van Wagoner, but adding Kimberly Bachmann, DDS, as a defendant. [Filing No. 17.] The Court screened this Amended Complaint, allowing Chappell's Eighth Amendment claim for damages to proceed against all three defendants as submitted. [Filing No. 19 at 4.] This Amended Complaint [Filing No. 17] is the operative complaint in this action.

In it, as relevant to this motion, Chappell alleges that, on December 25, 2019, his tooth broke and that, within a couple of days, he wrote a dental request because it was causing extreme pain. [Filing No. 17 at 2.] Chappell further contends that, after he returned from a four-day hospitalization in early February, he was told he had missed a dental appointment while he was hospitalized. [*Id.*] When he went to the dental department and told Ms. Rhoads why he missed the appointment, Chappell claims that Ms. Rhoads responded, "Well we will get to it when we get to it." [*Id.*]

According to Chappell, he emailed the dental department a reminder that he needed treatment on February 12, 2020, and then filed a BP-8 on March 20, 2020. [*Id.*] A few days after he filed the BP-8, Chappell alleges that Ms. Rhoads tried to get him to sign off on the BP-8 and when he refused, screamed at him that he'd "be sorry" and told him that he needed to restart the process by submitting a sick call request. [*Id.* at 3.] As alleged in the Amended Complaint, they argued about whether Chappell had sent an email or informed Ms. Rhoads why he had missed his appointment, all with Dr. Van Wagoner present. [*See id.* at 3-4.] Chappell alleges that Dr. Van Wagoner reiterated that he needed to start over with another sick call request and,

when he reported that he was in extreme pain, she responded, “I don’t care.” [*Id.* at 4.] Nonetheless, the next morning Chappell was seen by Dr. Van Wagoner, whom Chappell contends put a band around his tooth and tightened it until it broke, causing him more pain. [*Id.* at 4-5.]

## **II. STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

### **A. Bryan Chappell**

Chappell is a federal inmate who has been in BOP custody since September 7, 2012. [Filing No. 39-1 (Declaration of Renee Turner (“Turner Decl.”)) at ¶ 4.] Chappell is currently housed at the Federal Correctional Institution – Medium I in Butner, North Carolina (“FCI Butner Medium I”). [*Id.* at ¶ 3; *see* Filing No. 39-2 (Turner Decl. Attachment 1) at 1.] From approximately November 6, 2015, to January 6, 2021, Chappell was housed at the Federal Correctional Institution in Terre Haute (“FCI Terre Haute”), the medium security component of FCC Terre Haute. [Filing No. 39-1 (Turner Decl.) at ¶ 4; Filing No. 39-2 (Turner Decl. Attachment 1) at 1-2.]

### **B. BOP’s Administrative Remedy System**

The BOP has promulgated an administrative remedy system that is codified at 28 C.F.R. §§ 542.10, *et seq.*, and BOP Program Statement 1330.18, Administrative Remedy Program.<sup>3</sup> [Filing No. 39-1 (Turner Decl.) at ¶ 5.] This administrative remedy system was in effect at FCC Terre Haute during the entire time that Chappell was housed there. [*Id.*]

All unrestricted BOP Program Statements are available for inmate access via their respective institution law library, including BOP Program Statement 1330.18, Administrative

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<sup>3</sup> A full copy of BOP Program Statement 1330.18 is publicly available at [http://www.bop.gov/policy/progstat/1330\\_018.pdf](http://www.bop.gov/policy/progstat/1330_018.pdf).

Remedy Program. [*Id.*] Additionally, administrative remedy filing procedures are outlined and explained to the inmates each time they arrive at a federal prison as part of the Admission and Orientation process. [*Id.*] Inmates are likewise instructed where to find BOP Policy, FCC Terre Haute Institution Supplements, and how to access the inmate Electronic Law Library. [*Id.*] Finally, inmates are informed that if they have an issue or question for staff, they can ask in person or submit an Inmate Request to Staff by hard copy or electronically to a staff resource mailbox. [*Id.*]

All administrative remedy requests submitted by inmates are logged and tracked in the SENTRY computer database, which is an electronic record keeping system utilized by the BOP. [*Id.* at ¶ 6.] Administrative remedy requests filed at the institution level are referred to as BP-9s, and are identified in the SENTRY database by the notation “F1” following the remedy identification number. [*Id.* at ¶ 8.] Regional Office filings are referred to as BP-10s, and are identified by the notation “R1” following the remedy identification number. [*Id.*] Central Office (or General Counsel) filings are referred to as BP-11s, and are identified by the notation “A1” following the remedy identification number. [*Id.*] If amended or successive filings are submitted at the same level, the numeral following the alphabetical letter will change accordingly. [*Id.*] Rejected submissions are not considered “filed” and copies are not required to be maintained by the agency unless the submission was deemed “sensitive.” [*Id.*]

### **C. Chappell’s Administrative Remedies**

A full report of Chappell’s administrative remedy requests was run in SENTRY on April 8, 2021. [*Id.* at ¶ 10; *see* Filing No. 39-4 (Turner Decl. Attachment 3).] During his entire incarceration with the BOP, Chappell has submitted approximately 83 administrative remedies.

[Filing No. 39-1 (Turner Decl.) at ¶ 10; *see generally* Filing No. 39-4 (Turner Decl. Attachment 3).]

On February 11, 2021, a summary of the administrative remedies that Chappell submitted to the BOP Central Office regarding incidents allegedly occurring at FCC Terre Haute was run. [Filing No. 39-1 (Turner Decl.) at ¶ 11; *see* Filing No. 39-5 (Turner Decl. Attachment 4).] Based on this printout, it appears that Chappell exhausted five of these remedy cases—Remedy Case Nos. 921499, 921520, 924723, 926050, and 928471.<sup>4</sup> [Filing No. 39-1 (Turner Decl.) at ¶ 11; *see generally* Filing No. 39-5 (Turner Decl. Attachment 4).] All of these remedy cases were closed between April 3, 2018, and May 11, 2018. [Filing No. 39-1 (Turner Decl.) at ¶ 11; *see generally* Filing No. 39-5 (Turner Decl. Attachment 4).]

In his remedy submissions in Remedy Case No. 921499, Chappell alleged that he received inappropriate cardiac medical care at the Union Hospital Cath Lab on September 22, 2017, during a catherization procedure. [See Filing No. 39-1 (Turner Decl.) at ¶ 12; Filing No. 39-6 (Turner Decl. Attachment 5) at 1-5, 7, 9.] Chappell’s submissions in Remedy Case Nos. 921520 and 926050 are also related to this catherization procedure and his cardiac care. [See Filing No. 39-1 (Turner Decl.) at ¶¶ 13, 15; Filing No. 39-7 (Turner Decl. Attachment 6) at 1-4, 6, 9 (contending that he had not received appropriate medical care between September 25, 2017, and September 29, 2017, in retaliation for reporting what had purportedly occurred at Union Hospital on September 22, 2017); Filing No. 39-9 (Turner Decl. Attachment 8) at 1-3, 5, 7 (alleging the he was denied his right to file administrative remedies regarding “assault and

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<sup>4</sup> Remedy Nos. 969256-A1 and 969258-A1, alleging “staff misconduct,” were rejected at the Central Office level. [Filing No. 39-1 (Turner Decl.) at ¶ 11; *see* Filing No. 39-5 (Turner Decl. Attachment 4) at 2.] As such, the BOP did not retain copies of those submissions. [Filing No. 39-1 (Turner Decl.) at ¶ 11.]

medical malpractice” that purportedly occurred on September 22, 2017, and threatened by staff for trying to report this).] In Remedy Case No. 924723, Chappell further complains about his cardiac care, contending that he suffered a heart attack on November 19, 2017, and was refused an EKG. [See Filing No. 39-1 (Turner Decl.) at ¶ 14; Filing No. 39-8 (Turner Decl. Attachment 7) at 1-4, 6, 8.] And, in Remedy Case No. 928471, Chappell contends that, at the end of December 2017, P.A. Mata did not renew his pain medications in retaliation for filing on her. [See Filing No. 39-1 (Turner Decl.) at ¶ 16; Filing No. 39-10 (Turner Decl. Attachment 9) at 1-4, 6, 8.]

**D. Remedy No. 1014644-F1**

Between December 2019, when Chappell alleges he broke his tooth, through May 7, 2020, when Chappell first added his claims against Ms. Rhoads and the unknown dentist to his original lawsuit, Chappell submitted approximately twelve administrative remedies, in eleven different remedies cases. [Filing No. 39-1 (Turner Decl.) at ¶ 17; *see* Filing No. 39-4 (Turner Decl. Attachment 3) at 33-39.] Chappell did not exhaust any of these cases. [Filing No. 39-1 (Turner Decl.) at ¶ 17; *see generally* Filing No. 39-4 (Turner Decl. Attachment 3).] Moreover, of the twelve remedies that Chappell submitted in this period, one was related to Chappell’s dental care—Remedy No. 1014644-F1. [Filing No. 39-1 (Turner Decl.) at ¶ 17.]

Chappell submitted Remedy No. 1014644-F1 at the institutional level on March 30, 2020. [Filing No. 39-1 (Turner Decl.) at ¶ 17; *see* Filing No. 39-11 (Turner Decl. Attachment 10) at 1-4.] In it, Chappell alleges that his tooth broke over the Christmas holiday and that Ms. Rhodes and the “Dentist” were deliberately indifferent to his broken tooth. [Filing No. 39-1 (Turner Decl.) at ¶ 17; *see* Filing No. 39-11 (Turner Decl. Attachment 10) at 1-4.] The Warden responded to Chappell’s BP-9 on May 18, 2020. [Filing No. 39-1 (Turner Decl.) at ¶ 17; *see*

Filing No. 39-11 (Turner Decl. Attachment 10) at 5.] Chappell did not appeal this response to the Regional Director or attempt any more submissions related to this remedy case. [Filing No. 39-1 (Turner Decl.) at ¶ 17; *see generally* Filing No. 39-4 (Turner Decl. Attachment 3).]

### III. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(c) provides that summary judgment is proper if the pleadings, depositions, and admissions on file, together with any affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c). When ruling on a motion for summary judgment, the court construes all justifiable inferences in favor of the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A party who bears the burden of proof on a particular issue, however, may not rest on its pleadings, but must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact that requires a trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Donovan v. City of Milwaukee*, 17 F.3d 944, 947 (7th Cir. 1994).

It is not, however, enough for the party opposing a properly supported motion for summary judgment to rest on mere allegations or denials of his pleadings. *See Anderson*, 477 U.S. at 256. To overcome summary judgment, the non-movant must “respond to the moving party’s properly-supported motion by identifying specific, admissible evidence showing that there is a genuine dispute of material fact for trial.” *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 568 (7th Cir. 2017). “[T]he mere scintilla of evidence” and “[i]nferences supported only by speculation or conjecture” cannot defeat a motion for summary judgment. *Johnson v. Advocate Health & Hosps. Corp.*, 892 F.3d 887, 894 (7th Cir. 2018) (citations omitted).

### IV. ARGUMENT

The Prison Litigation Reform (“PLRA”) requires inmates to fully exhaust their administrative remedies before bringing any suit involving prison conditions. *See* 42 U.S.C. §



1997e(a); *Woodford v. Ngo*, 548 U. S. 81, 85 (2006); *Porter v. Nussle*, 534 U.S. 516 (2002); *Booth v. Churner*, 532 U.S. 731, 740-41 (2001); *Ford v. Johnson*, 362 F.3d 395, 398 (7th Cir. 2004). This statute makes exhaustion a condition precedent to suit in federal court. *Burrell v. Powers*, 431 F.3d 282, 284 (7th Cir. 2005). In *Booth*, 532 U.S. at 739, 741, the United States Supreme Court held that full exhaustion is mandatory, leaving the court with no discretion in this area, as “Congress has mandated exhaustion clearly enough, regardless of the relief offered through administrative procedures.” There is no “futility exception” to the PLRA exhaustion requirement. *Massey v. Wheeler*, 221 F.3d 1030, 1034 (7th Cir. 2000); *Perez v. Wis. Dep’t of Corr.*, 182 F.3d 532, 536-37 (7th Cir. 1999).

Exhaustion should be addressed early in the litigation because the PLRA “gives prisons and their officials a valuable entitlement—the right *not* to face a decision on the merits—which courts must respect if a defendant chooses to invoke it.” *Perez*, 182 F.3d at 536. Accordingly, when a defendant asserts exhaustion, “the judge must address the subject immediately” because the PLRA “can function properly only if the judge resolves disputes about [exhaustion] before turning to any other issue in the suit.” *Id.*; *see also Pavey v. Conley*, 544 F.3d 739, 742 (7th Cir. 2008) (“The alternative of trying the merits before exhaustion . . . is unsatisfactory . . . because it would thwart Congress’s effort to bar trials of prisoner cases in which the prisoner has failed to exhaust his administrative remedies.”).

Furthermore, “the PLRA’s exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” *Porter*, 534 U.S. at 532. To properly exhaust under the PLRA, an inmate must fully comply with the prison grievance procedures in effect at his place of confinement, *Jones v. Bock*, 549 U.S. 199, 199 (2007), including filing “complaints and appeals

in the place, and at the time, the prison's administrative rules require," *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002).

The BOP has promulgated an administrative remedy system that is codified at 28 C.F.R. §§ 542.10, *et seq.*, and BOP Program Statement 1330.18, Administrative Remedy Program ("P.S. 1330.18"). [Filing No. 39-1 (Turner Decl.) at ¶ 5.] The BOP administrative remedy process is a method by which an inmate may seek formal review of a complaint related to any aspect of his imprisonment. 28 C.F.R. § 542.10. To exhaust his remedies, an inmate must typically first file an informal remedy request through an appropriate institution staff member via a BP-8 prior to filing a formal administrative remedy request with the Warden, Regional Director, and General Counsel. 28 C.F.R. § 542.13; P.S. 1330.18 at 4. The BOP regulations require that an inmate submit his grievance on an appropriate form and "place a single complaint or reasonable number of closely related issues on the form." 28 C.F.R. § 542.14; P.S. 1330.18 at 5.

Typically, if the inmate is not satisfied with the response to his informal remedy (BP-8), he is required to first address his complaint with the Warden via a BP-9.<sup>5</sup> 28 C.F.R. § 542.14; P.S. 1330.18 at 4. Next, if the inmate is dissatisfied with the Warden's response, he may appeal to the Regional Director via a BP-10. 28 C.F.R. § 542.15; P.S. 1330.18 at 6-7. Finally, if the inmate is dissatisfied with the Regional Director's response, then the inmate may appeal to the General Counsel via a BP-11. 28 C.F.R. § 542.15; P.S. 1330.18 at 7. An inmate who has filed administrative remedies at all required levels and who has received a response to his appeal from the General Counsel is deemed to have exhausted his administrative remedies as to the specific

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<sup>5</sup> There are exceptions to the requirement that the initial filing be made at the institution. *See* 28 C.F.R. § 542.14(d); P.S. 1330.18 at 6. None of these, however, are applicable here.

issue, or issues, properly raised therein. *See* 28 C.F.R. § 542.15 (“Appeal to the General Counsel is the final administrative appeal.”). Following exhaustion at all three administrative levels, the inmate may file a civil action in the proper United States District Court with respect to the issues properly addressed and exhausted at the administrative level. 42 U.S.C. § 1997e(a).

In the instant case, Chappell exhausted only five remedy cases regarding incidents that allegedly occurred at FCC Terre Haute—Remedy Case Nos. 921499, 921520, 924723, 926050, and 928471.<sup>6</sup> [Filing No. 39-1 (Turner Decl.) at ¶ 11; *see generally* Filing No. 39-5 (Turner Decl. Attachment 4).] All of these remedy cases, however, were closed between April 3, 2018, and May 11, 2018. [Filing No. 39-1 (Turner Decl.) at ¶ 11; *see generally* Filing No. 39-5 (Turner Decl. Attachment 4).] This was more than a year and a half *before* Chappell broke his tooth on December 25, 2019, the triggering event for his claims against Ms. Rhoads and Dr. Van Wagoner in this case. Moreover, none of these fully exhausted remedy cases have anything to do with Chappell’s dental care. Four of them (921499, 921520, 924723, and 926050) involve his cardiac care or are related to a catherization procedure he underwent on September 22, 2017. [See Filing No. 39-1 (Turner Decl.) at ¶¶ 12-15; Filing No. 39-6 (Turner Decl. Attachment 5) at 1-5, 7, 9; Filing No. 39-7 (Turner Decl. Attachment 6) at 1-4, 6, 9; Filing No. 39-8 (Turner Decl. Attachment 7) at 1-4, 6, 8; Filing No. 39-9 (Turner Decl. Attachment 8) at 1-3, 5, 7.] And, in the remaining exhausted case (928471), Chappell complains that P.A. Mata did not renew his pain medications at the end of December 2017 in retaliation for filing on her. [See Filing No. 39-1 (Turner Decl.) at ¶ 16; Filing No. 39-10 (Turner Decl. Attachment 9) at 1-4, 6, 8.] Thus,

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<sup>6</sup> In fact, these are the *only* remedy cases that Chappell has exhausted during his BOP incarceration. [See *generally* Filing No. 39-4 (Turner Decl. Attachment 3).]

Chappell did not exhaust his claims against Ms. Rhoads and Dr. Van Wagoner in any of his exhausted remedy cases.

Furthermore, between December 2019, when Chappell alleges he broke his tooth, and May 7, 2020, when Chappell first added his claims against Ms. Rhoads and the unknown dentist to his original lawsuit, Chappell filed only one remedy related to his dental care—Remedy No. 1014644-F1. [See Filing No. 39-1 (Turner Decl.) at ¶ 17; Filing No. 39-4 (Turner Decl. Attachment 3) at 33-39.] Although Remedy No. 1014644-F1 involves Chappell’s claims against Ms. Rhoads and Dr. Van Wagoner stemming from his broken tooth [see Filing No. 39-11 (Turner Decl. Attachment 10) at 1-4], Chappell never appealed the Warden’s response to the Regional Director, despite being advised as to the appeals process in the response and having appealed to the Regional Director several times in the past. [Filing No. 39-1 (Turner Decl.) at ¶ 18; see Filing No. 39-11 (Turner Decl. Attachment 10) at 5; see generally Filing No. 39-4 (Turner Decl. Attachment 3).] Under the BOP administrative remedy process, appealing to the Regional Director was the next step that Chappell was required to take to exhaust his administrative remedies.<sup>7</sup> See 28 C.F.R. § 542.15; P.S. 1330.18 at 6-7. His failure to do so renders the claims encompassed in this remedy—the very claims that he advances in this action--unexhausted. See *Jones*, 549 U.S. at 199; *Pozo*, 286 F.3d at 1025 (requiring that inmates file “complaints and appeals in the place, and at the time, the prison’s administrative rules require”).

Finally, to the extent that Chappell will attempt to rely on the BP-9 he recently submitted at FCI Butner Medium I regarding his dental care (Remedy No. 1076010-F1) [see Filing No. 39-

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<sup>7</sup> And even if he *had* done so, it is undisputed that Chappell first brought his claims about his broken tooth in this Court on May 7, 2020 [see Filing No. 10 in *Chappell v. Trueblood*], before the Warden had even responded to his BP-9, the first step in the administrative remedy process. As set forth below, an inmate must exhaust his remedies before, and not during, litigation. See, e.g., *Jones*, 549 U.S. at 202; *Ford*, 362 F.3d at 398.

1 (Turner Decl.) at ¶ 19], this argument is a non-starter. Even if this remedy encompassed his claims against Ms. Rhoads and Dr. Van Wagoner (which, given that more than a year has passed, is unlikely), Chappell has not even received a response from the Warden—let alone appealed to the Regional Director and Central Office, as required to exhaust his administrative remedies. *See* 28 C.F.R. § 542.15; P.S. 1330.18 at 6-7. Thus, any reliance on Remedy No. 1076010-F1 to establish exhaustion is wholly premature.

More importantly, it is well settled that an inmate must exhaust his remedies *before*, and not during the course, of litigation. *See, e.g., Jones*, 549 U.S. at 202 (stating that the PLRA “requires prisoners to exhaust prison grievance procedures before filing suit”); *Ford*, 362 F.3d at 398 (noting that “Section 1997e(a) says that exhaustion must precede litigation” and that “[no] action shall be brought until exhaustion has been *completed*” (emphasis added)). And amending the Complaint does not cure this deficiency. *See Linton v. Randall*, No. 10-1208, 2011 WL 3678517, at \*2 (C.D. Ill. Aug. 22, 2011); *Salado v. Grams*, No. 06-C-598-C, 2007 WL 5517481, at \*1 (W.D. Wis. Apr. 6, 2007); *see also Perez*, 182 F.3d at 535 (noting that the district court lacks “discretion to resolve a claim on the merits, even if the prisoner exhausts intra-prison remedies before judgment”). Accordingly, none of the remedies that Chappell filed after he initiated his original action in April 2020—including Remedy No. 1076010-F1—are relevant to whether he properly exhausted his administrative remedies before bringing these claims in court.

Ultimately, because Chappell failed to exhaust his deliberate indifference claims under the Eighth Amendment against Ms. Rhoads and Dr. Van Wagoner, those claims are barred as a matter of law, justifying the dismissal of these defendants. *See Jones*, 549 U.S. at 211 (“There is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought in court.”); *Pozo*, 286 F.3d at 1025.

**V. CONCLUSION**

For the foregoing reasons, Defendants, Kimberly Rhoads and Dr. Jennifer Van Wagoner, in their individual capacities, by counsel, respectfully request that this Court grant summary judgment their favor and against Plaintiff Bryan Colby Chappell on their failure to exhaust defense, dismiss them from this action, and grant all other just and proper relief.

Respectfully submitted,

JOHN E. CHILDRESS  
Acting United States Attorney

By: s/ Gina M. Shields  
Gina M. Shields  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on April 23, 2021, a copy of the foregoing *Brief in Support of Defendants Rhoads and Van Wagoner's Motion for Summary Judgment on Failure to Exhaust Defense*, was filed electronically. Service of this filing will be made on the following ECF-registered counsel by operation of the Court's electronic filing system:

Jenny R. Buchheit  
ICE MILLER LLP  
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I further certify that on April 23, 2021, a copy of the foregoing *Brief in Support of Defendants Rhoads and Van Wagoner's Motion for Summary Judgment on Failure to Exhaust Defense*, was mailed, by first class U.S. Mail, postage prepaid and properly addressed to the following:

Bryan Colby Chappell  
Reg. No. 25865-009  
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s/ Gina M. Shields

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